

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
V.	)	NO. 3:11-CR-25
	)	J. PHILLIPS
	)	
DAVID MINER	)	
	)	
Defendant.	)	

Defendant David Miner, through undersigned counsel, respectfully submits the following objections to the Magistrate Judge's December 16, 2011, Report and Recommendation on his Motions to Dismiss.

The Magistrate Court erred when it recommended Counts Two and Three not be dismissed because they gave Mr. Miner adequate notice of the charges against him.

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Sixth Amendment to the United States Constitution. Nor is the addition of some language concerning 26 U.S.C. § 6012 adequate to overcome the original indictment's deficiencies. Even as amended, Counts Two and Three do not contain the elements of the offense charged, as required to pass constitutional muster. *See Hamling v. United States*, 418 U.S. 87, 117 (1974); *United States v. Landham*, 251 F.3d 1072, 1079 (6th Cir. 2001)(quoting *Hamling*).

#### R. 41 Motion to Dismiss for Violation of Due Process

The Magistrate Court erred when it recommended Mr. Miner's motion to dismiss be denied because the multiple indictments did not violate Mr. Miner's due process rights.

The Fifth Amendment to the United States Constitution states, "No person shall be... deprived of life, liberty, or property, without due process of law." The government seeks to deprive Mr. Miner of both his liberty and property. In pursuit of such end, it presented four different indictments at Mr. Miner's initial appearance in Knoxville. After Mr. Miner filed motions to dismiss those indictments, the government returned a fifth, superseding indictment against Mr. Miner. This fifth indictment continues to carry many of the same flaws as the first four.

Given what has transpired thus far in Mr. Miner's case, no person can be confident the case is proceeding with due process of law. To prevent others from suffering from the same uncertainties and errors the government, quite simply, must

be taught a lesson. It cannot proceed in such a haphazard manner and not be seen as trampling a person's due process rights. This Court should reject the Magistrate Court's recommendation and dismiss Mr. Miner's case with prejudice.

Respectfully submitted this 17th day of January, 2012.

FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2012, a copy of the foregoing Motion to Continue Trial was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s/ Laura E. Davis  
Laura E. Davis